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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re

Review of the Commission's
Regulations Governing
Programming Practices of
Broadcast Television
Networks and Affiliates

MM Docket No. 95-92

TO: The Commission

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REPLY COMMENTS OF AFLAC BROADCAST GROUP, INC.

AFLAC Broadcast Group, Inc. ("AFLAC"), by its counsel,
hereby submits its Reply Comments in the above-referenced
proceeding.

In its initial Comments, AFLAC stated its opposition to
the change proposed by the Commission in the "right to reject"
rule, which, if adopted, would permit networks to prohibit
affiliate preemption of network programming "based solely on
financial considerations." See Notice of Proposed Rule Making
("NPRM") at ¶ 25. AFLAC pointed out that such a change would
mean that any decision by a local station to preempt the network
for more highly rated (and, therefore, more profitable) locally
originated programming would immediately become open to question
and challenge by the network. AFLAC Comments at 6. AFLAC
believes that, in such circumstances, networks inevitably will
argue that the motivation behind the preemption is purely
economic, notwithstanding the station's articulation of the
public interest benefits that flow from the nonnetwork
programming. Id. Thus, the effect of the proposed change would

be to establish an effective presumption against affiliate preemption of network programming, except for news or public affairs programming.

The network comments submitted in this proceeding, particularly those of CBS and NBC, demonstrate the accuracy of AFLAC's prediction and highlight the serious risks to local station independence that are posed by the Commission's proposal. CBS, for example, asserts without any support whatsoever that "[t]he primary, if not exclusive motivation for sports and syndicated programming preemptions is, of course, economic." CBS Comments at 19 (emphasis added). On that basis, CBS takes issue with the Commission's assertion that its proposed change in the "right to reject" rule would permit local stations to preempt network programming "to air, for instance, a local sporting event or a local entertainment program." NPRM at ¶ 25. In CBS's view, permitting local stations to preempt the network for such programming would "eviscerate [the] intended purpose" of the proposed change in the "right to reject" rule. CBS Comments at 19. Thus, it is absolutely clear that, in the event that the Commission's proposed change were to be adopted, CBS would argue that an affiliate's preemption of network programming for anything other than local news and public affairs broadcasts was undertaken for purely economic reasons and should, therefore, be prohibited.

The position adopted by NBC in its Comments is even more opposed to the Commission's position. Thus, NBC argues that

we don't think there should be a government rule forbidding a station from rejecting a network program in order to carry even an 'important' program if that program can just as well be broadcast at another time period when the station is not carrying network programming, or forbidding a station from agreeing not to preempt network programming to carry a 'taped' syndicated or local program that could well be carried at some other time. NBC Comments at 31.

The networks' positions reflect a very narrow and limited perception of the public interest obligations of local television stations which, in AFLAC's view, is fundamentally inconsistent with the mandate of the Communications Act. The effect of adopting their position inevitably would be to chill the exercise of editorial discretion by local broadcasters and would significantly reduce or eliminate the broadcast of important local programming.

This can be illustrated by considering the impact of the network position on the local sports programming discussed by AFLAC in its Comments. There, AFLAC noted that its station in Savannah, Georgia, WTOC-TV (a CBS affiliate), delays the Letterman Show by 30 minutes each Friday during the fall football season to broadcast taped highlights of that night's local high school football games. AFLAC Comments at 5. There is a substantial local audience for this program, including the high school students themselves. Indeed, as AFLAC stated in its Comments, WTOC-TV has been commended for helping keep teenagers

off the streets after the games -- they return to their homes to watch the broadcast.

However, as noted above, CBS believes that preemptions of network programming for local sports events are always done for primarily economic reasons. Hence, under CBS's view of the Commission's proposed rule, WTOG-TV's local football highlights show could not continue to be shown in its present time period because the network programming would have been preempted "primarily for financial reasons."

Similarly, NBC would argue that the show could (and, therefore, should) be shown at another time period, when it would not be necessary to preempt network programming. That would mean, however, that the program could not be shown until after the Letterman Show, when it would be far less likely to have its current effect of helping keep teenagers out of trouble.

The second example given by AFLAC in its Comments, the preemption of a network movie that the local station deems objectionable for reasons of taste or other public interest considerations and the substitution of a locally originated movie, also demonstrates the extreme nature of the networks' position.

Because a locally originated movie contains more local advertising availabilities than a network movie, CBS would argue that the station's decision to preempt the network was obviously motivated primarily by financial concerns (CBS Comments at 19-20); hence, CBS would view the preemption as impermissible under the Commission's suggested change to the "right to reject" rule. Similarly, NBC would argue that the station's decision to preempt the network should not be permitted because the local movie could have been shown at another time.

However, under long-accepted views of the public interest standard, the station's decision to preempt the network movie in such circumstances not only would be entirely appropriate but, arguably, even required when the station honestly believes that the showing of the network movie is incompatible with its fundamental obligation to serve its local community.

These examples serve to demonstrate the basis for the concern expressed by AFLAC and many other broadcasters that the change proposed by the Commission in the "right to reject" rule would create a strong presumption against affiliate preemption of network programming. They also illustrates the inevitable complications for the Commission and its staff when they seek to discern the "true" motive behind station programming decisions as the Commission is called upon to resolve the inevitable disputes

between stations and networks that would flow from adoption of the Commission's proposal.

Accordingly, in view of the significant harm that would flow from amendment of the current "right to reject" rule, and in the absence of any supportable reason to change that rule,^{1/} AFLAC again submits that the "right to reject" rule should be retained unchanged.

Respectfully submitted,

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^{1/} See, e.g., Comments of New World Television, Inc. at 7 ("This aspect of the rulemaking appears to be a solution in search of a problem.")